

M e m o r a n d u m

580.0300

To: Santa Rosa – Auditing – (ARD)

Date: November 28, 1961

From: Headquarters – Tax Counsel – (EHS:JHK)

Subject: _____

This is in reply to your letter of November 21, 1961, concerning the above-named taxpayer. The taxpayer's manner of operation was called to our attention last May by a competitor who objected to the taxpayer's advertising that it could make sales of automobiles to servicemen returning to the United States without requiring them to pay sales tax reimbursement. The taxpayer is located in Fairfield, which, of course, is close to Travis Air Force Base, which is a Military Air Transport Service base. The taxpayer sells the automobiles at his Fairfield place of business. In the case of cash transactions, payment is made there, and in the case of credit transactions, the conditional sales contracts are entered there. The buyer makes applications with the California Department of Motor Vehicles for a one continuous trip permit entitling him to remove the automobiles from the State without paying a license fee. Also, in the case of credit transactions, the buyer is required to obtain insurance. The Taxpayer then makes arrangements with the buyer and has his agent drive the automobile out of the State. We understand that the buyer accompanies his car.

In view of these facts, we believe that the sales of automobiles are taxable. We cannot agree that these sales occur in interstate commerce and are exempt on that basis. There is little doubt that the sale occurs in California, where the parties enter the contract and select the automobile. In fact, it appears that physical possession of the automobile is turned over to the buyer at this point.

The fact that a person purporting to represent the seller drives the automobile out of the State is insufficient to make the sales transaction, otherwise solely intrastate, an interstate transaction. It would appear that the drive is under the authority and control of the owner of the automobile when he drives the car out of State and that delivery of the automobile is not postponed until arriving at an out-of-State point. We do not believe the facts establish out-of-State delivery by the seller as required by Sales Tax General Bulletin 58-7, Paragraph 4.

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